IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Writ Petition No.5626 of 2006

Anand Yeshwant Deokar & ors. Petitioners
Vs.
State of Maharashtra & ors. Respondents

Mr.H.S.Anand with Mr.Sachin Dhakephalkar for petitioners.

Mrs.M.P.Thakur, AGP for Resp.no.1.

Mr.N.V.Walalkar, Sr.Counsel with Mr.A.J. Bhor for BMC.

Mr.Mr.Abhijeet Wagh with Mr.G.P. Utangale i/b M/s. Utangale & Co. for resp.no.4.

Mr.Shekhar Naphade, Sr.Counsel with Mr.C.N. Gole for resp.no.5.

Mr.Virag Tulzapurkar, Sr.Counsel with Mr.S.V. Kadam i/b. M/s. Kadam & Co. for resp.no.5.

CORAM: B.H.MARLAPALLE & J.H.BHATIA,JJ.

December 21, 2006.

P.C.

1. Heard the learned counsel for the petitioners who have been issued notice dated 28/11/2005 by the Assistant Commissioner, G/North Ward of the Mumbai Municipal Corporation and this notice under Section 33 of the Maharashtra Slum Areas (Improvement, Clearance and Re-development) Act, 1971 (for short "the Slum Act") has been challenged in this petition filed under Article 226 of the Constitution. The

other reliefs prayed for are consequential.

2. Final Plot No.455, TPS IV admeasuring about 1122.92 sq.mtrs. at Bhavani Shankar Road, Dadar (West) was declared as the slum area by a notification dated 1st January 2004. The said plot belongs to the Mumbai Municipal Corporation and there were about 54 occupants. 49 of them had given their consent for development and the letter of intent was issued on 4th March 2004. Annexure II was issued on 27th June 2002 in which these 54 occupants find their names for being eligible for a tenement after the development is carried out. The plans were approved by the Corporation on 2nd July 2005 and commencement certificate was issued on the very same day. We are informed by the learned Senior Counsel appearing for the respondent no.5 as well as the learned Senior Counsel appearing for the respondent no.6 that 45 families out of the 54 found eligible vacated the plot and they were provided a temporary accommodation sometimes in July - August 2005 and they have been in such camps waiting for the development project to be completed.

3. The notification dated 1/1/2004 issued under

Section 4 of the Slum Act came to be challenged initially before the lower Appellate Tribunal and the appeal having been dismissed, a writ petition was filed before this Court which was also dismissed. The Letters Patent Appeal was also dismissed by this Court. We are also informed that multiple judicial proceedings have been initiated before different forums like the Co-operative Court, City Civil Court, the State Government and complaints before the Magistrates' Courts. A copy of Civil Suit (Stamp) No.5674 of 2005 has been placed before us, which shows that out of the ten plaintiffs, nine are the petitioners before us. We are also informed that out of the 49 occupants who signed agreements in favour of the respondent no.6 for sanction of the scheme, five of them are the present petitioners. The prayers in the suit are for restraining the Municipal Corporation from demolishing the respective plaintiffs' premises situated on the subject plot, without due process of law and for permanent injunction restraining the defendants from disturbing and interfering or obstructing the peaceful and quiet possession of the respective premises. The reliefs sought for in the suit thus emanate from the impugned notices dated 28/11/2005. In the petition memo the

petitioners have not stated that they have filed a civil suit.

4. The impugned notice issued by the Assistant Municipal Commissioner on 28/11/2005 has been challenged on the grounds that the said Officer is not the competent officer to issue such a notice under Section 33 of the Slum Act and the notice was required to be issued either by the Chief Executive Officer of the Slum Rehabilitation Authority or any of his delegatee officers. Reliance has been placed in this regard on the provisions of Section 3D of the Slum Act and more particularly Clause (H) which states that for the words "Competent Authority" the words "Slum Rehabilitation Authority" shall be substituted in sub-section (10) of Section 12 of the Slum Act. In addition the learned counsel for the petitioners has also relied upon a Division Bench decision of this Court in the case of Om Sai Darshan Co-operative Housing Soc. (Proposed) and anr. vs. The State of Maharashtra & ors. (Writ Petition No.910 of 2005 decided on 26/4/2006.

5. In the case of Om Sai Darshan Co-op. Hsg. Society (Supra) the following three issues came to be

framed for considerations:

(i) Whether the issuance of notification under Section 3C(1) of the Slum Act is a condition precedent for sanction of slum redevelopment scheme governed by D.C. Regulation 33(10)?

(ii) What is the meaning of the slum rehabilitation area for the purpose of D.C. Regulation 33(10)?

(iii) Whether the Petitioner No.1 - proposed society is entitled to grant of sanction to develop a particular area out of CTS 539/C-1?

. The first issue has been answered in the negative and while recording its findings on the second issue the Division Bench held that for the scheme under Regulation 33(10) the following areas are Slum Rehabilitation Areas:

(a) any area which fulfils the conditions laid down in Section 4 of the Slum Act and which is declared and notified as such, and

(b) slum rehabilitation area declared as such by the Slum Rehabilitation Authority fulfilling the conditions laid down in Section 4 of the Slum Act to qualify as slum area and/or required for implementation of any slum rehabilitation project.

6. In the instant case after the notification under Section 4 was issued on 1/1/2004 declaring Final Plot No.455 as the slum area, undoubtedly there is no further declaration issued under Section 3C(1) by the Chief Executive Officer of the SRA and Chapter 1-A cannot be made applicable per se. Unless the provisions of Chapter 1-A of the Slum Act are applicable, the petitioners cannot rely upon the provisions of Section 3D of the said Act. The learned counsel for the petitioners referred to Appendix 4 - Extracts from Development Control Regulations for Greater Bombay, 1991 issued by the Government of Maharashtra on 15th October, 1997 under the provisions of the Maharashtra Regional and Town Planning Act, 1966. As per the learned counsel for the petitioners, once the notification under Section 4 has been issued declaring an area to be a slum

area, it is not necessary for a further declaration for the said area as slum rehabilitation area as contemplated under Chapter 1-A of the Act. We do not find any force in these arguments and if such arguments are accepted the purpose of introducing Chapter 1-A would be totally nullified. It is well settled that when a statute has provided for the declaration of slum rehabilitation area, it has to be done so by following the very same provisions. In the case of Sai Darshan Co-operative Housing Society, the issue as to whether the subject area was a slum rehabilitation area or not was not under consideration and, therefore, on the face of the facts of this case, the reliance placed by the learned counsel for the petitioners on the said decision is misplaced.

7. Even in terms of equity, as has been noted, out of 54 eligible persons for allotment of tenements after the development of the slum area, 49 signed agreements in favour of the respondent no.6 and 45 of them have vacated their respective hutments and have been staying in temporary rehabilitation camps for the last more than one year or so and are anxiously waiting to shift to the new premises on the subject

plot which are under construction. The development activity has been brought to a stand-still on account of the status quo order passed in this petition or filing of some statutory appeals. When a vast majority of the occupants have consented before the letter of intent was issued and the commencement certificate was granted by the Municipal Corporation, it is clear that the legal proceedings are being initiated before different forums to stall the development activity.

8. In the premises we are satisfied that the challenge raised in this petition is devoid of merits and the same must fail at the threshold. The petition is rejected summarily. Ad-interim order stands vacated.

9. Oral application for stay of this order is hereby rejected.

(J.H.BHATIA,J.) (B.H.MARLAPALLE,J.)